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fact sheet

employment standards act

PREGNANCY LEAVE & PARENTAL LEAVE

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

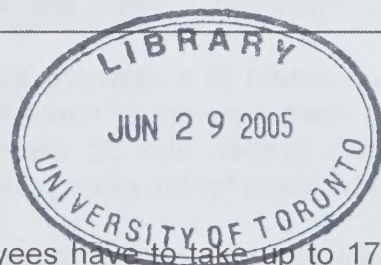
Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.

KEY DEFINITIONS

What is Pregnancy leave?

Under the *ESA*, Pregnancy leave is a right pregnant employees have to take up to 17 weeks of unpaid time off work. In some cases, the leave may be longer. Employers do not have to pay wages to someone who is on Pregnancy leave.



What are maternity benefits?

Maternity benefits are employment insurance payments from the federal Employment Insurance program. Under this program, eligible workers can receive maternity benefit payments during their Pregnancy leave. The Ontario Ministry of Labour cannot help an employee to receive these federal benefits.

Pregnancy leave and Parental leave under the *ESA* are different from maternity benefits and parental benefits under the federal *Employment Insurance Act*. For information about maternity benefits call the nearest Human Resources and Skills Development Canada—Employment Insurance Telemessage General Inquiries. The telephone number is listed in the blue pages of your telephone book, under "Employment and Unemployment."

What is Parental leave?

Under the *ESA*, Parental leave is a right that new parents have to take unpaid time off work when a baby or child is born or first comes into their care. Birth mothers who take Pregnancy leave are entitled to up to 35 weeks' Parental leave. Birth mothers who don't take Pregnancy leave and all other new parents are entitled to up to 37 weeks' Parental leave.

What are parental benefits?

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How much time off can parents take for Pregnancy and Parental leave?

A birth mother can take both Pregnancy and Parental leave. Birth mothers are entitled to 17 weeks of unpaid, job-protected Pregnancy leave. Those who take Pregnancy leave are entitled to up to 35 weeks' Parental leave. Birth mothers who don't take Pregnancy leave, and all other new parents, are entitled to up to 37 weeks' Parental leave.

If each parent of a newborn took the maximum leave allowed at separate times, the baby would have a parent at home for 89 consecutive weeks (17 weeks of pregnancy leave for the birth mother, plus 35 weeks of Parental leave for the birth mother, plus 37 weeks of Parental leave for the other parent).

Parents may also choose to go on leave at the same time: for example, a father could take Parental leave at the same time a mother is on Pregnancy or Parental leave.

GENERAL PROVISIONS—PREGNANCY AND PARENTAL LEAVE

Can an employer fire an employee for taking leave?

No. An employer can't fire or otherwise penalize an employee in any way because he or she is or will become eligible to take, plans to take or takes a Pregnancy or Parental leave.

What happens to an employee's pay, seniority and benefits?

Employers do not have to pay wages when an employee is on Pregnancy or Parental leave.

Employees earn seniority and credit for length of service and length of employment while on Pregnancy or Parental leave.

While an employee is on Pregnancy or Parental leave, the employer must continue to pay its share of the premiums to certain benefit plans (i.e., pension plans, life and extended health insurance plans, accidental death plans and dental plans) that were offered before the leave.

Can an employer require an employee to return early from leave?

No, an employer cannot require an employee to return from leave early.

What happens when an employee returns to work?

In most cases, an employee must be given his or her old job back at the end of his or her Pregnancy or Parental leave, or a comparable job if that job no longer exists.

In either case, the employee must be paid at least as much as he or she was earning before the leave. Also, if the wages for the job went up while the employee was on leave, or would have gone up if he or she hadn't been on leave, the employer must pay the higher wage.

The only time the employer doesn't have to reinstate the employee is if he or she is dismissed for legitimate reasons that are totally unrelated to the leave.

What if an employee decides not to return to work after Pregnancy or Parental leave?

If an employee on Pregnancy or Parental leave decides to resign before he or she returns to work, he or she must give at least four weeks' written notice to his or her employer. This notice requirement doesn't apply if the employer constructively dismisses the employee. See the "Termination of Employment & Severance Pay" Fact Sheet for information on constructive dismissal.

PREGNANCY LEAVE

QUALIFYING FOR PREGNANCY LEAVE

Who can take Pregnancy leave?

A pregnant employee is entitled to pregnancy leave whether she is a full-time, part-time, permanent or contract employee, provided that she:

- works for an employer that is covered by the *ESA*, and
- was hired at least 13 weeks before the baby's expected birth date (the "due date").

Can an employee who just started a new job take Pregnancy leave?

To be eligible for Pregnancy leave, an employee has to be hired at least 13 weeks before the date the baby is due, or *expected* to be born—not the date the baby is actually born.

An employee doesn't have to actively work for 13 weeks to be eligible for Pregnancy leave. The employee could be on layoff, vacation, sick leave or have started Pregnancy leave in the 13-week period before the due date, and still be entitled to her Pregnancy leave.

What if the baby is born before the employee is 13 weeks in the new job?

Eligibility for Pregnancy leave does not change because the baby was born early (i.e., before the due date) because it depends on the date the baby is expected to be born—not on the day it actually is born.

Does an employee who has a stillbirth or miscarriage still qualify for Pregnancy leave?

If an employee has a miscarriage or stillbirth, she is eligible for Pregnancy leave so long as the miscarriage or stillbirth occurred no more than 17 weeks before the due date.

How long does a Pregnancy leave last?

Most pregnant employees have the right to take up to 17 weeks of unpaid time off work. Employees may also choose to take less time off.

In certain cases, the leave may be longer. For example:

- If the employee has taken 17 weeks of leave and the baby has not been born yet, the employee can stay on Pregnancy leave until the baby is born, even if it means the Pregnancy leave lasts longer than 17 weeks. When the baby is born, the employee may start her Parental leave.

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- If the employee is not eligible for Parental leave (for example, there was a miscarriage or a stillbirth, or the baby died during the Pregnancy leave), the employee's Pregnancy leave ends on the *later* date of:

- 17 weeks after the Pregnancy leave began,

or

- six weeks after the birth, stillbirth or miscarriage, even if this means the Pregnancy leave will be longer than 17 weeks.

Does Pregnancy leave have to be taken all at one time?

Yes. Once an employee has started her Pregnancy leave, she must take it all at once and cannot split it up.

When can a Pregnancy leave begin?

The *earliest* a Pregnancy leave can begin is usually 17 weeks before the baby's due date. However, if an employee has a live birth more than 17 weeks before the due date, she must begin her Pregnancy leave on the date of the birth.

The *latest* a Pregnancy leave can begin is usually the baby's due date. However, if the baby is born earlier than the due date, the leave must begin no later than the day the baby is born.

Within these restrictions, an employee can start her Pregnancy leave any time she chooses. The employer can't decide when the employee will begin her leave.

What if the employee is sick—can the employer make her start her Pregnancy leave?

The employer cannot make an employee start Pregnancy leave, even if she is sick or if her pregnancy limits the type of work she can do.

How do employees tell their employer about their plans?

Employees must provide their employer with two weeks' written notice before beginning a Pregnancy leave. The notice letter must include:

- the starting date for the Pregnancy leave, and
- if the employer requests it, a certificate from a medical practitioner stating the baby's due date.

What if an employee fails to give notice?

An employee who doesn't give the proper notice does not lose her right to a Pregnancy leave.

What if the employee's plans change after she has given written notice?

Changing the date a leave starts:

If the date the leave starts is to be changed by the employee, the employer must be given a new written notice at least *two weeks* before the day the change will happen.

Changing the date a leave ends:

If the employee wants to change the date her Pregnancy leave will end, the employer must be given written notice at least *four weeks* before the change will happen.

What if an employee is ill and has to stop working earlier than planned?

If an employee has to stop working earlier than planned because of complications caused by her pregnancy before the baby's due date, she needs to give the employer:

- written notice no later than two weeks after she stops working stating the day the Pregnancy leave began, or will begin, and
- if the employer requests it, a medical certificate supporting her inability to work and stating the baby's due date.

An employee doesn't have to start her Pregnancy leave when she stops working due to illness. She can go on sick leave if she chooses.

What if an employee has her baby early and has to stop working sooner than planned?

If an employee has to stop working early because of a birth, stillbirth or miscarriage before the due date, she needs to give the employer:

- written notice no later than two weeks after she stops working, stating the day the Pregnancy leave began, and
- if the employer requests it, a certificate from a medical practitioner stating the due date and the actual date of birth, stillbirth or miscarriage.

What if the baby is born later than expected?

An employee who used all 17 weeks of Pregnancy leave before the baby was born would be able to remain on Pregnancy leave until the birth, and then, in most cases, begin her Parental leave.

Can an employer require an employee to provide proof she is fit to return to work?

No, an employer cannot require an employee to provide written medical documentation that she is fit to return to work.

What about giving notice about ending a leave?

If the employee doesn't specify a return date, the employer may assume she will take the full 17 weeks (or any longer period that she may be entitled to).

What about when an employee plans to take Parental leave after Pregnancy leave?

An employee who took Pregnancy leave who is planning to take Parental leave must give her employer written notice. This may be given at the same time as notice is given for the Pregnancy leave, if the employee wishes, or if it isn't, it *must* be given at least two weeks before the Pregnancy leave ends.

PARENTAL LEAVE

QUALIFYING FOR PARENTAL LEAVE

What kind of parent can take Parental leave?

A "parent" includes:

- a birth parent
- an adopting parent—whether or not the adoption has been legally finalized
- a person who is in a relationship of some permanence with a parent of a child and who plans on treating the child as his or her own.

Can part-time employees take Parental leave?

A parent is entitled to Parental leave whether he or she is a full-time, part-time, permanent or contract employee, provided he or she:

- works for an employer that is covered by the *ESA*, and
- was hired at least 13 weeks before the date the leave is going to start.

Can an employee who just started a new job take Parental leave?

To be eligible for Parental leave, an employee has to be hired at least 13 weeks before the date the leave is going to start.

An employee doesn't have to actively work for 13 weeks to be eligible for Parental leave. The employee could be on layoff, vacation, sick leave or pregnancy leave for all of the 13-week qualifying period and still be entitled to Parental leave.

Do employees who do not have a live birth qualify for Parental leave?

An employee who has a miscarriage or stillbirth, or whose spouse or same-sex partner has a miscarriage or stillbirth is not eligible for Parental leave.

How long does a Parental leave last?

Birth mothers who took Pregnancy leave are entitled to take up to 35 weeks of Parental leave. All other parents are entitled to take up to 37 weeks of Parental leave. An employee may choose to take a shorter Parental leave.

Does Parental leave have to be taken all at one time?

Yes. Once an employee has started Parental leave, he or she must take it all at one time and can't split it up. An employee can't use up part of the leave, return to work for the employer from which he or she took the leave, and then go back on Parental leave for the unused portion.

Although the federal Employment Insurance program allows employees to earn a limited amount of wages without having their parental benefits reduced, an employee who goes back to work for the employer from whom he or she took the leave, even if it is only for a few hours a week, will give up the rest of his or her leave.

When can a Parental leave begin?

Birth mothers who took a Pregnancy leave

A birth mother who took a Pregnancy leave must usually begin her Parental leave right after the Pregnancy leave ends.

However, if the baby has not come into her care for the first time by the time the Pregnancy leave ends (i.e., if her baby was hospitalized since birth and remains in hospital), she can choose to return to work and start her Parental leave once the baby comes home. She isn't *required* to wait until the baby comes home to begin her Parental leave, but she can if she wants to.

All other parents

All other parents must begin their Parental leave no later than 52 weeks after:

- the date their baby was born, or
- the date their child first came into their care.

Note: The Parental leave doesn't have to be completed within the 52-week period; it just has to be started.

How do employees tell their employer about their plans?

Employees must provide their employer with two weeks' written notice before beginning a Parental leave. The notice letter must include the starting date for the Parental leave.

An employee taking a Pregnancy leave may inform the employer of both leaves at the same time (i.e., when she gives her two weeks' written notice before her Pregnancy leave), *but isn't required to*.

What if the employee's plans change after he or she has given written notice?

Changing the date a leave starts:

If the date the leave starts is to be changed by the employee, the employer must be given a new written notice at least *two weeks* before the day the change will happen.

Changing the date a leave ends:

If the employee wants to change the date he or she will return to work, the employer must be given a written notice at least *four weeks* before the change is to happen.

What about giving notice about ending a leave?

An employee can tell the employer when he or she will return to work after Parental leave, but doesn't have to. If the employee doesn't specify a return date, the employer may assume that the employee will take the full period he or she is entitled to.

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about pregnancy leave & parental leave as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
| <input type="checkbox"/> Family Medical Leave | <input type="checkbox"/> Retail Workers |
| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the *ESA* and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.



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